

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 35102 of 2007(D)

OS.718/2007 OF I ADDL.MUNSIFF COURT.,ERNAKULAM.

PETITIONER:

S.GANAPATHY, S/O VENKITACHALA IYER,
AGED 59, RESIDING AT CHURCH LANDING ROAD,
ERNAKULAM, KOCHI-16.

BY ADV. SRI.K.P.SREEKUMAR.

RESPONDENTS:

1. THE MANAGER,
ANDHRA BANK,
M.G.ROAD, ERNAKULAM.
2. THAILAMBAL, AGED 65,
D/O VENKITACHALA IYER, SREEJI VILLA,
'C' WING, FLATE NO.402,
ALAMEDA ROAD, THANE, MUMBAI -4000604.
3. RAJAMBAL, AGED 72 YEARS,
D/O VENKITACHAL IYER, 52/30,
NETAJI STREET, AYYAPPA NAGAR,
TRICHI-620021.

BY ADV. SRI. ABRAHAM MATHEW.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/11/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.35102 OF 2007

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Dated this the 29th day of November 2007

JUDGMENT

This writ petition is preferred against the order in O.S.No.718 of 2007 of the I Addl.Munsiff's Court, Ernakulam whereby the Munsiff directed the plaintiffs to take steps to call for records from concerned bank and produce relationship certificate. The bank, in spite of being made a party, has chosen to remain ex parte. They have received notice as well. If there is any dispute for them regarding the amount shown, they would have appeared or submitted before the court. When the bank does not do so in spite of notice, I do not find it necessary to call for again from the bank regarding accounts for the reason it is the bank which is going to disburse the amount.

2. Next is regarding relationship. Plaintiffs have filed the suit contending that their brother is not heard for a period of more than 7 years and therefore he is to be presumed to be dead and the amount lying in the savings bank account has to be disbursed to them. Here also the bank has not chosen to contest the relationship. Any how, an affidavit is already filed. In order to satisfy the conscience of the court, I direct the first plaintiff

to enter the box and give evidence and if there is no cross examination, let it be accepted and final judgment may be passed in this case. I hope and trust that the trial court will not again continue to postpone the case and prevent the parties from getting the benefit on technicalities. The court below shall bear in mind that technicality shall not defeat ends of justice. I also wish and direct the counsel for the bank to appear before court below to help the court in disposing of the matter in a most suitable manner.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-